

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	
Comments on A La Carte and Themed)	
Tier Programming and Pricing Options)	MB Docket No. 04-207
for Programming Distribution on Cable)	
Television and Direct Broadcast)	
Satellite Systems)	

COMMENTS OF THE NEW JERSEY BOARD OF PUBLIC UTILITIES

The New Jersey Board of Public Utilities ("Board") submits the following comments in response to the request issued by the Federal Communications Commission ("Commission") on May 25, 2004, under MB Docket No. 04-207, concerning a la carte and themed tier programming and pricing options for programming distribution on cable television and direct broadcast satellite ("DBS") systems. In that request for comments, the Commission seeks input to assist in responding to a specific request from members of Congress. The Board, as the local franchising authority ("LFA") in the State of New Jersey, therefore takes this opportunity to provide comments for consideration in that request and for use in any future action on the part of the Commission.

As a preliminary issue, the Board finds significant appeal to the proposal set forth by the United State Senate's Committee on Commerce, Science, and Transportation in its letter of May 19, 2004 to the Commission. The approach advocated by the Committee, providing consumers with the maximum level of competition while still providing the cable operators with the ability to "package" channels, strikes the Board as

an extremely pro-consumer opportunity such that continued exploration along those lines is warranted by the Commission. Of utmost importance is the subscribers' option to elect to retain the current bundled basic and cable programming services packages now offered or to select the channels on an a la carte basis. This dual approach would help to assure that less-popular channels could survive an a la carte pricing scheme and guard against a shrunken diversity of programming.

Using the Committee's proposal as a blueprint, the Board wishes to raise a number of concerns that should be address by any future action taken by the Commission as to a la carte or themed tier programming. First, the Board strongly believes that any a la carte purchase options should not include the basic service tier ("BST"). Instead, the channels carried on the BST, including over-the-air, "must carry" and public, educational and governmental ("PEG") channels, as must carry channels should continue to be a mandatory element of cable service. Inclusion of these channels in all services allows cable operators to continue to provide a "community of views" and an opportunity for diverse voices to be heard, provides universal access to PEG channels, and is in keeping with the statutes and regulations currently in place under the Act. As such, the Board believes that BST should not be provided on an a la carte or themed tier basis. Additionally, because the LFA may primarily regulate only BST under current law, inclusion of these channels in the BST allows the LFA to retain regulatory oversight as to these important "public service" channels.

Second, rate regulation of some type is necessary to ensure that real and actual choice is made available to the consumer. If a la carte pricing can be set by operators at a level in significant excess of the actual costs associated with the channel and the

delivery of that signal, any a la carte pricing will be useless from a consumer point of view. Allowing unregulated and therefore unlimited channel pricing would result in any consumer friendly elements being “priced out of the market” such that the economic incentives to choose a la carte would be undercut or destroyed. Accordingly, some methodology must be instituted to ensure that the price of the individual or themed tier reflects actual and competitive pricing, with enforcement in the hands of either the Commission or the Local Franchising Authority.

Third, any implementation should apply to all video signal providers, and not simply to cable operators. To the extent possible, a “level playing field” between cable and DBS should be a component of any a la carte or themed tier pricing system. Similarly, the a la carte or themed tier system should be technologically transparent to the extent possible, with the offerings provided to both analog and digital customers so long as analog customers remain a significant element of the customer population. In New Jersey, nearly fifteen (15) years ago, Adelphia implemented an option whereby a la carte pricing was instituted for each analog channel while maintaining the customers ability to subscribe to bundled basic and cable programming service tiers as well as many mini-tiers. While the NJBPU approved this approach, the FCC struck down a similar approach in Florida in 1994 and therefore withdrew the approach from New Jersey. Adelphia’s brief experiment showed the technical feasibility of providing a la carte channels on an analog basis such that there is no reason to limit this proposal to the digital tiers.

The Board looks forward to the Commission’s continued review and examination of a la carte and themed tier programming, and the Board is confident that, so long as

any proposal ensures real and actual competition and choice, a la carte and themed tier pricing will result in significant benefits for cable and DBS customers.

Respectfully submitted,

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